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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,658	08/22/2003	Young-Kyu Lee	P56943	8420

7590

08/14/2006

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,658

Applicant(s)

LEE, YOUNG-KYU

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/22/03</u> . | 6) <input type="checkbox"/> Other: ____. |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6,8, and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagome (JP 6-293366), in view of Chung (5,741,534), Kinrei (2000-342206), Natt (EP 449643), Katokichi (JP 11-113511), and Lenders (GB 2295371).

In regard to claim 1, Nakagome discloses a container system that would be capable of functioning as a "lunch box" (i.e., a container that could be used to contain food that could be eaten at lunchtime – or any time one desired), comprising a first container (#1) having a lip (e.g. #2) at a top, and an indented portion (e.g., #2a), just below the lip, and a second container (#5) having a rim at a top wherein the second container is disposed in the first container, the rim of the second container being supported by the indented portion of the first container, and wherein a space is formed between the bottom surface of the second container and a bottom surface of the first container with the bottom surface of the second container physically separating a second food disposed in the second container from a first food disposed in the first container beneath the bottom surface of the second container. Claim 1 only differs from Nakagome in the recitation in the preamble that the lunch box is "capable of blast frozen preservation". The abstract of Nakagome is silent in this regard, nor does it mention the materials of construction. It is noted that the phrase is not clear since it could have

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several possible meanings. For example, blast freezing is a preservation step whether or not the product is packaged at the time of freezing. Also, if the phrase is meant to convey that the container is capable of being exposed to blast freezing without damage to the container, it would appear that most, if not all conventional packaging materials would have this property. In any case, as evidenced by applicant's admission of the prior art, it was well established to employ containers that are capable of blast frozen preservation, and to therefore modify Nakagome, if necessary, and employ containers that are capable of blast frozen preservation for its art recognized and applicant's intended function would have been obvious. Chung is relied on as one example of a container that has the functional property. Kinrei, Natt, Katokichi, and Lenders are relied on as further evidence of the conventionality of providing a container within a container. In regard to claim Nakagome discloses the containers are microwave compatible. In regard to claim 3, the containers of Nakagome are considered to be rigid in that they are self-supporting and support the food. The degree of rigidity is seen to have been an obvious matter of routine determination. In regard to claims 4 and 6, Nakagome discloses a lid for the first container. The particular conventional material one chooses to employ is seen to have been an obvious result effective variable. In regard to claim 5, which recites a groove in the second container for steam venting, since Nakagome provides for steam venting between inner and outer container as evidenced by Fig. 5, and since it was conventional to provide a groove in an inner container for fluid communication as evidenced by Natt, to provide Nakagome with such structure would therefore have been obvious. In regard to claim 8, it is not clear from the figures or

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abstract of Nakagome whether the food contacts the bottom of the second container or not. In any case, as evidenced by Kinrei, it was conventional to provide the food in the outer container short of the base of the inner container and to modify Nakagome, if necessary, would have been obvious. Claims 10-20 are rejected for the reasons given above.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Simpson et al (US2001/00-1674).

Claim 7 recites that the container is surrounded by a sealed paper cover. As evidenced by Simpson et al, it was well established to employ a paper cover for a tray. To modify Nakagome and provide a sealed paper cover for its art recognized and applicants intended function would therefore have been obvious.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Sakakibara et al (4,348,421).

Claim 9 recites that the container is surrounded by a sealed plastic bag. As evidenced by Sakakibara et al, it is well established in the art to provide a container with such a conventional expedient. To modify Nakagome and add a bag as an enclosure for its art recognized and applicant's intended function would therefore have been obvious.

The remainder of the references cited on the PTO892 form are cited as pertinent art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
8/10/06